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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,853	09/26/2003	Todd A. Bland		9760

7590
11/09/2005
Todd A. BLAND
13708 Frederick Avenue
Omaha, NE 68138

EXAMINER

ROBERTS, LEZAH

ART UNIT PAPER NUMBER

1614

DATE MAILED: 11/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/670,853	Applicant(s) BLAND, TODD A.	
	Examiner Lezah W. Roberts	Art Unit 1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

Detailed Action

Applicant should submit an argument under the heading "Remarks" pointing out disagreements with the examiner's contentions. Applicant must also discuss the references applied against the claims, explaining how the claims avoid the references or distinguish from them.

Specification

Objections

The disclosure is objected to because of the following informalities: the specification makes reference to figure 6 being a flow chart. In the amended drawings filed January 26, 2004, the figure has been removed.

Appropriate correction is required.

Arrangement of the Specification

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

(a) TITLE OF THE INVENTION.

(b) CROSS-REFERENCE TO RELATED APPLICATIONS.

(c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR
DEVELOPMENT.

(d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT

(e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A
COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer
program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)),
and tables having more than 50 pages of text are permitted to be
submitted on compact discs.) or
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a).
"Microfiche Appendices" were accepted by the Office until March 1, 2001.)

(f) BACKGROUND OF THE INVENTION.

(1) Field of the Invention.

(2) Description of Related Art including information disclosed under 37
CFR 1.97 and 1.98.

(g) BRIEF SUMMARY OF THE INVENTION.

(h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

(i) DETAILED DESCRIPTION OF THE INVENTION.

(j) CLAIM OR CLAIMS (commencing on a separate sheet).

(k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(I) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A

“Sequence Listing” is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required “Sequence Listing” is not submitted as an electronic document on compact disc).

Claims

Objections

Claims 1-9 are objected to because of the following informalities: the applicant uses the term “selectable”, the term is beyond what is required and therefore should be deleted from the claim. The word “con tainer” in claim 6 should read “container” and the word “mifgt” in claim 9 should be spelled “might”. The applicant uses the term “Article” to mean a “dentifrice” which is “a powder, paste or liquid for cleaning the teeth”, the term is beyond what is required and therefore should be deleted from the claim.

Appropriate correction is required.

Rejections, Indefiniteness

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language.

1) The term "relatively-thin" in claims 1-9 is a relative term which renders the claim indefinite. The term "relatively" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The claim uses the term "relatively-thin" but it is unclear what is meant by "relatively" and relative to what. According to Answers.com, the word relatively means "In a relative manner; in comparison with something else: *a relatively minor problem*". The applicant fails to clarify to what he is comparing the thinness of the capsule.

2) Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term "upgraded" in claims 6 and 9 is used by the claim to mean "the capsules were added to a container for storage", while according to Merriam-Webster's online dictionary, the accepted meaning is "an upward

grade or slope; an increase, rise; or improvement.” The term is indefinite because the specification does not clearly redefine the term.

3) Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The applicant uses the term “conventional” it is not clearly defined within the specification what exactly is meant by “conventional” and what is “unconventional” for that matter. In claims 4, 5 and 8 the applicant uses the term “type”, it is not clearly understood what matter the term “type” encompasses. Based on the nature of the invention, it is assumed it refers to the “type of dentifrice” or it could mean the substance the dentifrice is made up which would have various possibilities. The terms are indefinite and the applicant fails to point out the metes and bounds as to what these phrases encompass.

Rejections, Anticipation

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1) Claims 1-5 and 7-8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Brown (US 4,427,116).

Brown teaches encapsulated toothpaste that is easily stored, non-toxic and easily breakable when chewed or bitten (see abstract). The amount of toothpaste within a capsule is sufficient for a single brushing. The encasements are gelatin capsules but others can be used (column 2, lines 1-2). The toothpaste can be made available in various flavors for improving the marketability and for affording the user a varying selection. Numerous sizes, colors, designs and shapes may be used to encourage children to brush regularly and effectively. The encasing means the toothpaste can be easily handled, stored and dispensed. Upon use of the encapsulated toothpaste, one only has to gently apply pressure with the teeth to the capsule for the release of the toothpaste into the mouth and upon removal of the outer coating; the teeth may be brushed as usual (column 2, lines 12-17). The reference clearly anticipates the instant claims insofar as to disclose encapsulated toothpaste that can be used to deliver a single dose of toothpaste and then brushing occurs as usual.

2) Claims 1-9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Alexander (WO 02/26078).

Alexander teaches toothpaste disclosed in single dosage forms varying in size, shapes and flavors. The individual portions may be called capsules, globules or beads (page 7, lines 164- 167), as set forth in claim 3. Each capsule may be dimensioned so that it will hold about the right amount of toothpaste for an average tooth cleaning

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procedure (page 7, line 168-170). The capsule walls may be made of, e.g. dried toothpaste, gelatin, or a starch and the actual toothpaste may be of a gel or of a paste consistency, as set forth in claims 2, 4 and 8. The interior of the bead may hold dry material as well (page 11, lines 289-292), as set forth in claim 5. The shapes include those attractive to children as well as ordinary shapes such as spherical, hexagonal and triangular and square (page 9, lines 221-225), as set forth in claim 7. The capsules can be stored in different types of containers, one of which being a large dispenser that may serve the entire family, with a container body and a screw lid (see fig. 2 and page 12, lines 315-317), as set forth by claims 6 and 9. The reference clearly anticipates the invention of the instant claims insofar as to disclose encapsulated single dose toothpaste, that can come in different sizes, shapes, colors and flavors, which can be stored in a removable cap vessel.

Claims 1-9 are rejected.

No claims allowed.

An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon

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skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lezah W. Roberts whose telephone number is 571-272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Frederick Krass
Primary Examiner
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A handwritten signature in cursive script, appearing to read "Frederick Krass".

Lezah Roberts
Patent Examiner
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A handwritten signature in cursive script, appearing to read "Lezah Roberts", followed by a long horizontal line extending to the right.